IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1608 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

CHANDULAL A DOSHI

Versus

STATE OF GUJARAT

Appearance:

MR VP THAKKER for Petitioners

MR AJ DESAI APP for Respondent No. 1

MR NALIN K THAKKER for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/08/2000

C.A.V. JUDGEMENT

1. Heard the learned counsel for the parties. The petitioner herein seeks quashing of Criminal Case No.2885

of 1991 filed against him by the complainant, who is the respondent No.2. The original complaint alleges the offence punishable under Sections 424, 34 and 114 of the Indian Penal Code and appears to be in respect of making and execution of two documents by some of the petitioners.

2. According to the brief note of facts furnished by the learned counsel for the original complainant, there are two properties situated in Limadawali Sheri, Vaniawad in Bhuj (Kutch) which are bearing City Survey Nos.1614 and 1616 (hereinafter, for convenience, referred to as property 'A' and 'B'). The petitioner No.1, by a deed, released the whole of the property 'A' in favour of one Jagdish A. Doshi, who is the accused No.1 in the complaint and who has not preferred to join the present petition. The said release deed dated 06.08.1983 is produced by the complainant while filing the complaint. The second property 'B' is also released by the petitioner No.1 in favour of the petitioner No.2 by release deed dated 6.8.1983. The first property 'A' is sold by the first accused to the complainant and his brother by a sale deed dated 13.7.1987 which is also produced by the complainant. The petitioner No.2 has sold the property 'B' to the petitioners Nos.3 to 6 by a sale deed dated 28.10.1988 which is also produced by the complainant. According to the complainant, the petitioners concerned have, while selling the property 'B' by the sale deed dated 28.10.1988, made a false statement by selling to petitioners Nos.3 to 6 certain part of the property 'A' which really belonged to the accused No.1 and wherein the seller, i.e. the petitioner No.2, had no right or interest. And by the earlier sale deed dated 13.7.1987, the whole of the property 'A' had been sold to the complainant which included the courtyard and varanda on the first-floor. Thus, the grievance of the complainant is that a part of the property 'A' with the exclusive right of its use and occupation has been sold by the petitioner No.2 to the petitioners Nos.3 to 6 by making a false statement in the subsequent sale deed. All the seven accused persons being members of the same family, they colluded against the complainant and deprived him of his exclusive rights to a part of the property by the sale deeds as above, according to the complainant. Broadly on the basis of these facts, the complainant has filed the original complaint alleging the offence under Sections 424, 34 and 114 of the I.P.C. and also simultaneously filed a civil suit in the Court of the Civil Judge at Bhuj. The complainant was examined on oath and thereafter the order to register the case and issue the summons was made on the same day. The learned

counsel for the accused has conceded that the civil suit filed on the same facts has neither been proceeded nor any interim relief obtained in the suit for all these years. It is further conceded at the outset that the offence under Section 424 as alleged in the complaint is not made out; but it is submitted that a more serious offence under Section 199 is disclosed and made out in the complaint and hence the complaint and the criminal proceedings cannot be quashed.

3. The learned counsel for the petitioners has strongly objected to the reference to any section other than the one under which the offence was alleged in the original complaint, and submitted that when the offence originally alleged is admittedly not made out, the complaint must fail and the criminal proceedings must be quashed. In support of this submission, a judgment of this Court in S.V.MEHTA v. RAMESH N. PATEL 1986 GLH 775) is relied upon and it is submitted that the Magistrate is required to carefully examine the contents of the complaint and find out whether the dispute is purely of a civil nature and the complaint is filed simply to harass and bring pressure on the accused. On the facts of the present case, it is submitted that while the Magistrate is supposed to have examined the complaint and the statement of the complainant and satisfied himself about the offence under Section 424 having been made out, the complainant cannot now be heard to say that although such offence is not made out, some other more serious offence is disclosed. As against that, the learned counsel for the original complainant has reiterated that the criminal proceedings should not be quashed merely because the offence originally alleged was admittedly not made out. It is, however, not seriously disputed that the whole dispute is of a purely civil nature based on the reading of the two sale deeds and in respect of which a civil suit has been simultaneously filed by the complainant.

4. It is also contended that while taking cognizance of the offence, it is incumbent upon the trial Court to see that a list of the prosecution witnesses had been filed before the process is issued under Section 204 of the Code of Criminal Procedure. And, in the facts of this case, the names of the witnesses are neither mentioned in the complaint nor submitted by a list. In support of the submission, the judgment of this Court in DHANJI MAVJI v. GADHVI GOVIND JIVA 1974 GLR 136) is relied upon. In reply, it is submitted that it is neither the case of the complainant nor is it indicated anywhere in the complaint that he proposed to examine any

witnesses.

5. The learned counsel for the petitioners also submitted that the second sale deed by which the alleged part of property 'A' is alleged to have been sold by the petitioner No.2 to the petitioners Nos.3 to 6 is dated 28.10.1988 and the original complaint and the civil suit are filed exactly when the period of three years of limitation was expiring. Although the date of the first sale deed by which property 'A' was sold to the complainant is 13.7.1987 and the period of limitation is alleged to have commenced from that date, the argument of the bar of limitation has no substance as the complaint is arising from the execution of the second sale deed.

6. Thus, the challenge to the original complaint and the criminal proceedings is mainly on the ground that the complaint itself does not admittedly make out the offence alleged against the petitioners and the dispute among the parties is of a purely civil nature for which civil remedies are simultaneously resorted to. It is, therefore, suggested that an inference can be drawn that the criminal proceedings are initiated with an oblique motive of bringing pressure upon the petitioners. It would indeed be hazardous for this Court to examine at this stage whether an offence different from the one alleged in the complaint was made out by the complainant. The learned counsel for the original complainant has failed to point out as to how each ingredient of the offence under Section 199 was even disclosed in the complaint or the statement of the complainant. And the fact remains that what is under challenge is the taking of the cognizance of a particular offence which is admittedly not made out. Although the original accused No.1 has not joined the present petition as a petitioner, it clearly appears that the offence is alleged to have been committed by executing the second sale deed to which the petitioners Nos.2 to 6 are the parties, insofar as the part of the premises originally sold by the accused No.1 to the complainant has allegedly been sold away by the second sale deed. In this view of the matter, the complaint against all the accused persons is admittedly not disclosing offence as alleged and the attempt at making out other offence from the repeated reading of the complaint has failed. Even otherwise, as held by this Court in BHANUBEN SHAMJIBHAI v. STATE OF GUJARAT [1993 (1) GLH (UJ) 2], when a substantive civil suit is already filed in respect of the same dispute and the dispute disclosed is of a civil nature, the process in the criminal proceedings ought to be quashed in view of the admitted fact of non-disclosure of the alleged offence.

7. In the result, the petition succeeds and the complaint filed in the Criminal Case No.2885 of 1991 and the further proceedings pursuant thereto are quashed and set aside. Rule is made absolute with no order as to costs.

Sd/-

(KMG Thilake)

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